

From: [Hansen, Craig](#)
To: [McDowell, Tom](#); [Backsen, Sarah](#)
Subject: FR00004962 | Re: Wolf 10(j) review
Date: Friday, October 21, 2022 3:03:24 PM
Attachments: [image.png](#)

Greetings, Tom and Sarah:

We have addressed your comments on the proposed section 10(j) rule for the Colorado gray wolf. Many thanks to Kelly Hornaday, Kurt Broderdorp, and Scott Becker for their help addressing comments and updating the rule.

- Track-changes version with comments accepted or addressed is here: ☐
[20220929_DRAFT_CO_gray_wolf_Prop_10j_v3.docx](#)
- Clean version is uploaded in DTS, and also available in this folder ☐
[FR4962_20220920_CO_Wof_10j](#) or directly here: ☐
[20221021_CO_gray_wolf_Prop_10j_v8.docx](#)

Sarah - I took a look at updating the foreseeable future language, but the text from the "20220930 SAF" template on the SAT SharePoint seems to either be outdated or overly complicated for our needs in the the 10(j) rule, so I left as is (starts on page 26).

For ease of reference, here is that template language on foreseeable future from the 9-30-2022 SAF:



The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” The regulatory language that is applicable to determinations of the foreseeable future is contained in the regulations at 50 C.F.R. 424.11(d) promulgated in 2019 (*In re: Washington Cattlemen’s Ass’n*, No. 22-70194 (9th Cir. Sept. 21, 2022) (staying the district court’s vacatur of the 2019 regulations pending resolution of the motion for reconsideration) (*Washington Cattlemen’s*)). However, those regulations remain the subject of ongoing litigation, and their continued applicability is therefore uncertain. If the litigation results in vacatur of the 2019 regulations, the regulations that were in effect before those 2019 regulations (the pre-2019 regulations) would again become the governing law for listing decisions. Because of the uncertainty surrounding the legal status of the regulations, we undertook two analyses of the foreseeable future: one under the 2019 regulations and one under the pre-2019 regulations, which may be reviewed in the 2018 edition of the Code of Federal Regulations at 50 CFR 424.11(d). Those pre-2019 regulations did not include provisions clarifying the meaning of “foreseeable future,” so we applied a 2009 Department of the Interior Solicitor’s opinion (M-37021, “The Meaning of ‘Foreseeable Future’ in Section 3(2) of the Endangered Species Act” (Jan. 16, 2009) (M-37021)).

The analyses under both the 2019 regulations and the pre-2019 regulations are included in the decision file for this decision and posted on <https://www.regulations.gov>. Based on those analyses, we concluded that our determination of the foreseeable future would be the same under the pre-2019 regulations as under the 2019 regulations.

For petitions to delist:

As with the analysis of the foreseeable future, the regulatory language that is applicable to determinations of whether delisting a species is warranted is contained in the regulations at 50 CFR 424.11(e) promulgated in 2019 (*In re: Washington Cattlemen’s Ass’n*, No. 22-70194 (9th Cir. Sept. 21, 2022) (staying the district court’s vacatur of the 2019 regulations pending resolution of the motion for reconsideration)). However, because of the above-described uncertainty surrounding the legal status of the regulations, we undertook two analyses of whether delisting is warranted: one under the 2019 regulations and one under the pre-2019 regulations, which may be reviewed in the 2018 edition of the Code of Federal Regulations at 50 CFR 424.11(e).

The analyses under both the 2019 delisting regulations and the pre-2019 delisting regulations are contained in the above-described memo that we have included in the decision file and posted on <https://www.regulations.gov>. Based on those analyses, we concluded that our determination that delisting is not warranted would be the same under the pre-2019 regulations as under the 2019 regulations.

and here is the current text in the proposed rule:

In this section we address the likelihood that populations introduced into the proposed NEP will become established and survive in the foreseeable future. In defining the experimental population boundary, we attempted to encompass the area where the population is likely to become established in the foreseeable future. The term “foreseeable future” appears in the Act in the statutory definition of “threatened species.” The Act does not define the term “foreseeable future.” However, our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both

the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. While we use the term "foreseeable future" here in a different context (to determine the likelihood of population establishment and to establish boundaries for identification of the experimental population), we apply a similar conceptual framework. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant effects of release and management of the species and to the species' likely responses in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Please let me know if we can be of any additional assistance.

Craig.

From: Hansen, Craig <Craig_Hansen@fws.gov>

Sent: Tuesday, October 18, 2022 4:14 PM

To: McDowell, Tom <tom_mcdowell@fws.gov>; Backsen, Sarah <Sarah_Backsen@fws.gov>

Subject: Re: Wolf 10(j) review

Hi, Tom and Sarah:

Just an FYI to let you know that Kurt Broderdorp started to address some of the comments on the proposed rule this afternoon. Scott Becker will help him tomorrow. The Colorado Field Office will have all of the comments addressed and back to me by COB this Friday, after which I will update the package and notify you.

Thank you!

Craig.

From: McDowell, Tom <tom_mcdowell@fws.gov>

Sent: Friday, October 14, 2022 11:22 AM

To: Hansen, Craig <Craig_Hansen@fws.gov>; Backsen, Sarah <Sarah_Backsen@fws.gov>

Subject: RE: Wolf 10(j) review

Here's my document with suggested edits and comments. Please let me know if you have any questions.

Thanks for your work on this Craig, really appreciated.

Tom

From: Hansen, Craig <Craig_Hansen@fws.gov>
Sent: Friday, October 14, 2022 7:35 AM
To: Backsen, Sarah <Sarah_Backsen@fws.gov>
Cc: McDowell, Tom <tom_mcdowell@fws.gov>
Subject: Re: Wolf 10(j) review

Sarah:

I've merged your comments into the following working document. Everyone is welcome to review and comment on this version, if helpful.

 [20220929_DRAFT_CO_gray_wolf_Prop_10j_v3.docx](#)

Craig.

From: Hansen, Craig <Craig_Hansen@fws.gov>
Sent: Friday, October 14, 2022 8:32 AM
To: Backsen, Sarah <Sarah_Backsen@fws.gov>
Cc: McDowell, Tom <tom_mcdowell@fws.gov>
Subject: Re: Wolf 10(j) review

Thanks, Sarah. I will merge your comments with the version that the team is still editing, and can share that link to help.

From: Backsen, Sarah <Sarah_Backsen@fws.gov>
Sent: Friday, October 14, 2022 8:28 AM
To: Hansen, Craig <Craig_Hansen@fws.gov>
Cc: McDowell, Tom <tom_mcdowell@fws.gov>
Subject: Wolf 10(j) review

Hi Craig,

Here are my comments on the wolf 10(j). I'm still working through the rest of the supporting documents, but wanted to go ahead and send this now since I know time is crunched. Let me know if you have any questions!

I'm cc-ing Tom for awareness since I know he's reviewing this now too. Tom, It occurred to me this morning that if I had been smart, I should have had us both review in a One Drive document or something. Sorry for not thinking of that sooner.

Craig - thanks for your work getting this pushed through in record time!

Sarah Backsen (she/her)

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For FWS IR 5&7 ES employees: For correspondence templates and resources, please see [Interior Regions 5 and 7's Correspondence OneDrive](#) or [Headquarters' Briefing Paper Template Sharepoint](#)